

# **NORTH CAROLINA SUPPLEMENTAL RETIREMENT PLANS GROUP TRUST**

## **DECLARATION OF TRUST**

### **RECITALS**

**WHEREAS**, the Supplemental Retirement Income Plan was established pursuant to N.C.G.S. § 135-90 (“NC 401(k)”); and

**WHEREAS**, the North Carolina Public Employee Deferred Compensation Plan was established pursuant to N.C.G.S. § 143B-426.24 (“NC 457(b)”); and

**WHEREAS**, pursuant to N.C.G.S. § 135-96, The Supplemental Retirement Board of Trustees (the “Board”) serves as trustee and plan administrator of the Plans; and

**WHEREAS**, NC 401(k) and NC 457(b) (collectively, the “Plans”) were established for the exclusive purpose of providing benefits to their members and their beneficiaries. Members and their employers, in some cases, both make contributions towards the provision of these benefits; and

**WHEREAS**, the Board holds the assets of both the Plans in separate trusts; and

**WHEREAS**, the Board desires to commingle the corpus of each such trusts in a group trust for investment purposes. The Board hereby establishes The North Carolina Supplemental Retirement Plans Group Trust for such purpose by adoption of this declaration; and

**WHEREAS**, the Board will act as trustee, under the terms and conditions of this Declaration of Trust, for all money or property that may be transferred to or received by it from time to time as the trustee.

**NOW, THEREFORE**, pursuant to the Board’s power as trustee of the separate trust funds for the Plans, it is hereby declared as follows:

## **ARTICLE I ESTABLISHMENT OF THE GROUP TRUST**

### **Section 1.1 The Group Trust**

The North Carolina Supplemental Retirement Plans Group Trust (the “Group Trust”) is established under the laws of the State of North Carolina to commingle the assets of each Participating Trust for investment purposes. The Group Trust is intended to qualify as a trust subject to section 115 of the Internal Revenue Code of 1986, as amended (the “Code”), and as a group trust under Internal Revenue Service Revenue Ruling 81-100 as amended by Revenue Rulings 2004-67, 2008-40, and 2011-1, and any successor ruling, regulation, or similar pronouncement (collectively, “Revenue Ruling 81-100”), and this Declaration of Trust will be construed to give effect to that intention.

### **Section 1.2 The Participating Trusts**

For purposes of this Declaration of Trust, the Participating Trusts will be the trust funds under:

- (a) The North Carolina Supplemental Retirement Income Plan; and
- (b) The North Carolina Public Employees Deferred Compensation Plan.

The NC 401(k) trust is attributable to the NC 401(k), a plan that is tax-qualified under Code section 401(a). The NC 457(b) trust is attributable to the NC 457(b) a plan that is tax-advantaged under Code section 457(b). Each Participating Trust adopts this Group Trust as part of the Plans.

Notwithstanding any contrary provision in this Group Trust, the Trustee of this Group Trust is permitted, to the extent permitted under North Carolina (the “State”) law, to hold in this Group Trust funds that consist exclusively of trust assets held under plans qualified under Code section 401(a) that are exempt from Federal income taxation pursuant to Code section 501(a) and funds from eligible governmental plan trusts or custodial accounts under Code section 457(b) that are exempt from Federal income taxation pursuant to Code section 457(g). For this purpose, a trust includes a custodial account that is treated as a trust under Code sections 401(f), or 457(g)(3). This paragraph shall be interpreted consistent with the requirements of Revenue Ruling 2011-1 and any successor thereto.

### **Section 1.3 The Group Trust Fund**

The Board shall serve as the trustee (the “Trustee”) of the Group Trust and hereby establishes a trust fund consisting of such monies or other property as shall from time to time be transferred to the Trustee by the trustee of the Participating Trusts. The monies and other property so received and accepted by the Trustee, together with the proceeds and reinvestments thereof, the income therefrom and any other increment thereto will hereinafter be referred to as the “Group Trust Fund”. The Trustee shall accept deposits into the Group Trust Fund only from trusts that meet the requirements of Revenue Ruling 81-100.

The Trustee shall hold, invest, reinvest and disburse the Group Trust Fund in the manner provided herein.

#### **Section 1.4    Situs of Group Trust**

The Group Trust will be located and administered in the State at the office of the North Carolina Department of State Treasurer. The Group Trust may have one or more managers or employees within or without the State.

#### **Section 1.5    Title to Trust Property**

The Trustee shall have legal title to the assets of the Group Trust and no Participating Trust will be deemed to have individual ownership interest of any asset. Instead, each Participating Trust shall have an undivided ownership interest in the Group Trust Funds and shall share proportionately with all other Participating Trusts in the net income, profits, and losses thereof.

## **ARTICLE II TRUSTEE**

### **Section 2.1 Trustee Responsibility**

The Trustee will be the custodian of the Group Trust Fund and shall hold, administer, collect the income of, and make payments from the Group Trust Fund, all as hereinafter provided. Subject to the conditions and limitations set forth herein and any other applicable requirements under State law, the Trustee will be responsible only for the property actually received by it hereunder, and the Trustee shall not be responsible for the administration or interpretation of any Plan solely by reason of this Declaration of Trust (including, without limitation, the determination of participation rights of any person and the determination of benefits or rights of any person having or claiming any interest in or benefit under the Group Trust Fund or any Plan) or for those assets of any Plan that have not been delivered to and accepted by the Trustee. Pursuant to N.C.G.S. §135-96(e) and consistent with Section 2.4(r) below, the Trustee may delegate the duties of custodian to an entity with the knowledge necessary for the proper administration of the Participating Trusts and the Group Trust Fund.

### **Section 2.2 Exclusive Benefit and Prohibited Assignment**

At no time shall any part of the Group Trust Fund be used for, or diverted to, any purpose other than for the exclusive purpose of providing benefits to members and beneficiaries of the Participating Trusts (collectively, the “Eligible Individuals”), including providing such benefits through the funding of the benefits payable to such Eligible Individuals and by the payment of reasonable expenses of each respective Participating Trust. At no time shall any part of the Group Trust Fund that equitably belongs to any Participating Trust be used for, or diverted to, any purpose other than for the exclusive benefit of Eligible Individuals with respect to a Participating Trust. At no time may any Participating Trust assign any portion of its equity or interest in the Group Trust Fund.

### **Section 2.3 Disbursement of the Group Trust Fund**

Consistent with Section 2.2, the Trustee shall make such payments from the Group Trust Fund to and/or for the benefit of the Eligible Individuals, only at such times, in such manner, in such amounts, in such form and for such purposes as may be specified in one or more directions from the respective trustee of a Participating Trust from time to time, and shall have no responsibility and will be without liability for any payment made pursuant to any such direction. The Trustee will be under no duty or obligation under this Declaration of Trust to make any inquiry or investigation as to whether any such direction is made pursuant to the provisions of any Plan or Section 2.2. Any direction will be deemed to include a certification that any payment directed thereby is one that such person is authorized to direct, and the Trustee may conclusively rely on such certification without further inquiry. Payment in response to such direction will be a complete discharge of the Trustee of its responsibility for the holding and safekeeping of such assets and any assets so paid over shall no longer constitute part of the Group Trust Fund.

## **Section 2.4 Powers and Duties of Trustee**

The Trustee shall have only those powers, rights, duties, and responsibilities expressly set forth in this Declaration of Trust (determined without regard to any Plan), which hereby incorporates by reference those powers and duties described in N.C.G.S. § 135-96. Without limiting the preceding sentence, and except to the extent inconsistent with a more specific provision herein or any applicable State law, the Trustee shall have the following powers:

- (a) invest and reinvest any monies at any time forming any part of the Group Trust in any property, real or personal, tangible or intangible, or part interest therein, wherever situated throughout the world, whether ownership is recognized by virtue of domestic or foreign laws, without regard to the proportion such property or property of a similar character held in the Group Trust may bear to the entire amount so held, including, but not limited to, domestic or foreign, capital, common and preferred stocks, warrants, convertible securities, personal, corporate, partnership, trust and governmental obligations, exchange-traded funds, derivative instruments and transactions of any kind, trust and participation certificates, oil, mineral or gas properties, royalty interests or rights, including equipment pertaining thereto, leaseholds, mortgages and other interests in realty, notes and other evidences of indebtedness or ownership, secured or unsecured, contracts;
- (b) sell, exchange, lend, convey, transfer or dispose of options with respect to, any property, whether real or personal, domestic or foreign, at any time held by it, and any sale may be made by private contract or by public auction, and for cash or upon credit, or partly for cash and partly upon credit, and no person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition;
- (c) purchase, sell, hold and generally deal in and with all futures contracts (and any options on such contracts), whether foreign or domestic, and including without limitation futures contracts and forward contracts with respect to financial instruments, currencies and any group or index of securities (or any interest therein based upon the value thereof), and in connection therewith to deposit any property as collateral with any broker, dealer, agent, or other financial institution, to grant security interests in such collateral and to execute or cause to be executed any and all required documents (including without limitation customer account agreements);
- (d) grant, purchase, sell, exercise, permit to expire, and otherwise to acquire, dispose of, hold, and generally deal in any manner with and in all forms of options whether foreign or domestic, and in connection therewith to deposit any property as collateral with any broker, dealer, agent, or other financial institution, to grant security interests in such collateral and to execute or cause to be executed any and all required documents.
- (e) enter into swap and other derivative transactions of any kind, whether foreign or domestic, including without limitation interest rate, currency and equity swaps and caps and floors and in connection therewith to deposit any property or collateral with any

broker, dealer, agent, or other financial institution, to grant security interests in such collateral and to execute or cause to be executed any and all required documents;

- (f) invest money or assets of this Group Trust in any collective investment fund of a bank or trust company consisting of assets of employee benefit trusts and qualifying as a group trust under Revenue Ruling 81-100. The governing document of any such fund in which assets of this Group Trust are invested is hereby incorporated and made a part hereof as if fully set forth at length herein. Assets of this Group Trust invested in such fund will be held and administered by the trustee of the fund in accordance with the terms of and under the powers granted in said governing document;
- (g) to compromise, compound, and settle any debt or obligation due to or from it as Trustee hereunder and to reduce the rate of interest on, to extend, or otherwise modify, or to foreclose upon default or otherwise enforce any such obligation;
- (h) to vote in person or by proxy on any stocks, bonds, or other securities held by it; to exercise any options appurtenant to any stocks, bonds, or other securities for the conversion thereof into other stocks, bonds, or securities, or to exercise any rights, warrants, or similar instruments to subscribe for additional stocks, bonds, or other securities and to make any and all necessary payments therefor; to join in, or to dissent from, and to oppose, the reorganization, recapitalization, consolidation, liquidation, sale, or merger of corporations or properties in which it may be interested as Trustee; and to appoint one or more individuals or corporations as voting trustees under voting trust agreements, and to delegate to such voting trustees discretion to vote;
- (i) to make, execute, acknowledge, and deliver any and all deeds, leases, mortgages, assignments, documents of transfer and conveyance, and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (j) to borrow or raise monies at any time and from time to time for the purposes of the Group Trust, and for any sum so borrowed to issue its promissory note as Trustee and to secure repayment thereof by pledging all or any part of the assets of the Group Trust; and no person loaning money to the Trustee will be bound to see to the application of the money loaned or to inquire into the validity, expediency, or propriety of any such borrowing;
- (k) to loan any securities at any time held by it to brokers, dealers, or other financial institutions upon such security as the Trustee determines, and during the term of any such loan to permit the loaned securities to be transferred into the name of and voted by the borrower or others;
- (l) to form a corporation or corporations of any other entity under the laws of any jurisdiction, to participate in the forming of any such corporation or corporations or entity or acquire an interest in or otherwise make use of any corporation or corporations or entity already formed, for the purpose of investing in and holding title to any property which the Trustee is authorized to acquire under this Section 2.4;

- (m) to exercise all conversion, subscription, voting, and other rights of whatsoever nature pertaining to any such property and to grant proxies, discretionary or otherwise, with respect thereto;
- (n) in the event of any default in respect of any investment held hereunder, to exercise such powers in the collection or realization of such investment including without limitation the following specification: in the event of foreclosure or any proceedings for the collection or realization of any mortgage or mortgages held hereunder to exchange any such mortgage or mortgages for any other property; to purchase such property at any foreclosure or other sale or to acquire such property by deed without foreclosure; to retain property bought in under foreclosure or taken over without foreclosure for such period of time as may be deemed proper; to delegate to any person or corporation any or all powers of the Trustee, discretionary or otherwise, in respect of the collection or realization of any investment held hereunder;
- (o) to participate in and consent to any plan of reorganization, consolidation, merger, combination, dissolution, recapitalization, liquidation, or similar plan and any action thereunder, including without limitation by the specification thereof, the deposit of any property with any protective, reorganization or similar committee, the delegation or discretionary powers thereto, the sharing in the payment of its expenses and compensation, and the payment of any assessments levied with respect to such property; to receive and retain property under any such plan whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds;
- (p) to abandon, settle, compromise, extend, renew, modify, release, adjust, or submit to arbitration in whole or in part and without the order or decree of any court any and all claims and suits whether such action shall increase or decrease the assets held hereunder;
- (q) to cause or authorize any investments from time to time held by it to be registered in, or transferred into its name as Trustee, or the name of its nominee, or in the name of any other nominee, or to retain them unregistered or in form permitting transferability by delivery; and to deposit any such investments in or with any depository, sub-custodian, clearing corporation, or any central system for handling of investments, or any nominee thereof; but the books and records of the Trustee shall at all times show that all such investments are part of the Group Trust;
- (r) to employ such counsel, accountants, custodians, sub-custodians, depositaries, brokers, appraisers, agents, and advisers, including investment advisers, or others as it shall deem advisable, and to pay their reasonable expenses and compensation from the assets of the Group Trust in accordance with Article VII; and
- (s) to do all administrative acts whether or not expressly authorized which it may deem necessary or proper for the protection of the property held hereunder or otherwise for the benefit of the Group Trust.

The foregoing is not intended to limit the ability of the Group Trust to invest any investment

otherwise permitted by law.

Pursuant to N.C.G.S. § 135-96(e), the Board may delegate any and all of its authority under this section 2.4.

### **Section 2.5    Parties Dealing with the Trustee**

All parties dealing with the Trustee will be fully protected in accepting and acting on the advice, representation, or any instrument in writing executed by the Trustee and the dealing party shall not be required to look into the terms of the agreement to determine that the action of the Trustee is authorized by the terms of the Declaration of Trust.



## **ARTICLE III ADMISSIONS AND WITHDRAWALS**

### **Section 3.1 Interest of Participating Trusts to be Determinable at All Times**

Admissions to and withdrawals from the Group Trust will be made in such manner, at such times, and in such amounts that each Participating Trust's interest in the Group Trust may be definitively determined. Admissions and withdrawals will be allowed on a regular basis within a reasonable period following such a request. In the event that the Trustee determines that the Group Trust lacks liquidity sufficient to satisfy a withdrawal request, the Trustee, to the extent permitted by law, may limit withdrawals from the assets of the Group Trust, in whole or in part, until such time as the Group Trust has sufficient liquidity to satisfy the full amount of the withdrawal request.

### **Section 3.2 Satisfaction of Interests of Participating Trusts Withdrawn**

The interests of a Participating Trust withdrawn in whole or in part may, at the option of the Trustee, be satisfied by the distribution from the Group Trust to the Participating Trust in cash or in kind or partly in cash and partly in kind.

The amount distributed to the Participating Trust upon the withdrawal in whole or in part will be equal to the value of the Participating Trust, or part thereof, on the date as of which such withdrawal is effective.

At no time prior to the satisfaction of all liabilities with respect to Eligible Individuals attributable to a Participating Trust shall any part of the corpus or income of the Group Trust which equitably belongs to a Participating Trust be used for or diverted to purposes other than for the exclusive benefit of such Eligible Individuals, or defraying the reasonable expenses of administering the Group Trust. Payments by the Trustee to a Participating Trust will be deemed to be for the exclusive benefit of Eligible Individuals.

### **Section 3.3 Separation if Participating Trust is Not Qualified**

If at any time it should be determined that any Participating Trust does not satisfy the requirements for participation under Section 1.2, the Trustee, as soon as reasonably practicable, following the date upon which the Trustee is advised that such Participating Trust does not meet the requirements of Section 1.2, shall withdraw from the Group Trust such interest of the Participating Trust. Any resulting cost to the Group Trust will be borne solely by such Participating Trust.

## **ARTICLE IV**

### **ACCOUNTS AND INVESTMENT OF GROUP TRUST FUND**

#### **Section 4.1    Commingled Funds and Accounting**

The Trustee shall consolidate all assets of the Participating Trusts in a single fund, or multiple funds, which may be commingled for investment purposes. The Trustee shall maintain a bookkeeping accounting system whereby the beneficial interest of each Participating Trust in each such fund is identifiable (the “Participating Trust Accounts”). The contributions of each Participating Trust, and the disbursements made with respect to each Participating Trust will be credited to or charged against such Participating Trust Accounts.

The Trustee shall adjust, account for, and allocate investment transactions, valuations of assets, rates of return and expenses with respect to the Group Trust Fund as a whole and with respect to each separate Participating Trust Account, and those records will be available at all reasonable times to the trustees of the Participating Trusts.

The separate Participating Trust Account of each Participating Trust shall reflect the contributions made with respect to such Participating Trust, the share of investment gain and loss attributable to such Participating Trust, and disbursements made with respect to such Participating Trust. The beneficial interest of each Plan in the Group Trust Funds from time to time will be equal to the balance credited to its Participating Trust Account. The Participating Trust, the Eligible Individuals, and all other persons claiming under, through, or against the Plan shall in the aggregate not have any right to or claim against any assets of the Group Trust in excess of the balance credited to the Participating Trust Account of such Participating Trust. The Trustee shall cause the separate Participating Trust Account of each Plan to be adjusted periodically to reflect the share of each of the Participating Trusts of the fair market value of the Group Trust. For purposes of valuation, the value of the interest maintained by the Group Trust Fund with respect to any Participating Trust Account will be the fair market value of the portion of the fund held for that Participating Trust Account, determined in accordance with generally recognized valuation procedures.

The Participating Trust Account need not be invested separately or segregated on account of the maintenance of such separate account; the separate Participating Trust Accounts will be maintained only as a bookkeeping entry to reflect the share of each Participating Trust participating in the Group Trust.

#### **Section 4.2    Trustee to Manage and Direct Investment**

The Trustee will be responsible for managing and directing the investment of the Group Trust Funds, provided that the Trustee may, in its discretion, enter into a contract or contracts with one or more investment managers, (an “Investment Manager”) for the purpose of providing the investment management services required hereunder. Subject to the investment guidelines described in Section 4.3, the Trustee shall manage the investments of the Group Trust Fund in its sole discretion, including through appointment of one or more Investment Managers. The Trustee is permitted to delegate its authority under this Section 4.2.

### **Section 4.3    Investment Guidelines**

The Trustee shall invest the Group Trust Funds in the same manner as it invests funds as required by the Investment Guidelines and any applicable Investment Policy Statements adopted by the Participating Trusts, or a successor thereto.

**ARTICLE V**  
**WITHDRAWAL PROCEDURES, DIRECTIONS TO TRUSTEE**

**Section 5.1    Directions to the Trustee**

Any certificates, notices, orders, requests, instructions, directions, or objections (referred to as a “Direction” or “Directions” as the context so requires) of the trustee of a Participating Trust or other persons authorized to act pursuant to this Declaration of Trust will be satisfactorily evidenced to the Trustee by a written statement signed by the trustees of the Participating Trust (provided, however, that the Trustee may, in its sole discretion, accept oral notices, orders, requests, instructions, directions, and objections subject to confirmation in writing), and the Trustee will be fully protected for acting in accordance therewith or for failing to act in the absence thereof. Directions to the Trustee will be sent to such address as the Trustee shall designate in writing from time to time and in such format as may be mutually agreed between the parties. Such communications to the Trustee will be binding upon the Group Trust and the Trustee when received by the Trustee.

Notwithstanding anything to the contrary in this Declaration of Trust, if the Trustee is also the trustee of a Participating Trust, the Trustee may act in accordance with the terms of the Participating Trust, the terms of which are hereby incorporated herein by reference, and such action may be deemed to be taken in accordance with a Direction received under this Declaration of Trust. In addition, the Trustee will be fully protected in acting in accordance with Directions received by it through authenticated telecommunications facilities, including without limitation, communications effected directly between electro-mechanical or electronic devices, to the same extent as if such Directions were in writing.

**Section 5.2    Declaration of Group Trust**

The Trustee may, in its sole discretion exercised in good faith, consult with legal counsel of its choice, with respect to the meaning or construction of this Declaration of Trust, the proper administration of the Group Trust Fund or the Trustee’s obligations and duties hereunder, and the Trustee will be fully protected with respect to any action taken or omitted by the Trustee in good faith and in reliance upon the advice of such counsel. If a dispute shall arise as to any act to be performed by it, the Trustee may, based on advice from legal counsel, postpone performance of such act until adjudication of such dispute will be made in a court of competent jurisdiction.

## **ARTICLE VI FIDUCIARY OBLIGATIONS**

### **Section 6.1    Standard of Care**

The Trustee is a fiduciary and shall discharge its duties with respect to the Group Trust solely in the interests of the Eligible Individuals and for the exclusive purpose of providing benefits to such persons and defraying the reasonable expenses of administering the Group Trust, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use in the conduct of an enterprise of like character and with like aims, all in accordance with the provisions of this Declaration of Trust.

However, notwithstanding the foregoing, the Trustee shall not be under any duty to require payment of any contributions to the Group Trust Fund or to see that any payment made to the Group Trust Fund is computed in accordance with the provisions of a Plan or policy of reimbursement or otherwise be responsible for the adequacy of the Group Trust Fund to meet and discharge any liabilities under the Plans. The duties and obligations of the Trustee as such will be limited to those expressly imposed upon them by this Declaration of Trust. Notwithstanding any reference to the Plans or provisions thereof, it is hereby expressly agreed that the Trustee is not a party to the Plans pursuant to this Declaration of Trust.

Any “fiduciary” under this Declaration of Trust shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of that service, except where any of the following apply:

- (a) The fiduciary was not acting within the scope of that fiduciary’s official duties;
- (b) The fiduciary was not acting in good faith;
- (c) The fiduciary committed gross negligence or willful or wanton misconduct that resulting in the damages or injury;
- (d) The fiduciary derived an improper personal financial benefit, either directly or indirectly, from the transaction;
- (e) The fiduciary incurred the liability from the operation of a motor vehicle.

### **Section 6.2    Allocation of Responsibility**

Except as may be otherwise provided by statute, no “fiduciary” under this Declaration of Trust will be liable for any alleged or actual act or failure to act on the part of another fiduciary in carrying out any fiduciary responsibility where such fiduciary responsibility is allocated to such other fiduciary by this Declaration of Trust or pursuant to a procedure established in this Declaration of Trust.

## **ARTICLE VII EXPENSES OF FUND**

### **Section 7.1    Expenses of Group Trust Fund**

All expenses properly and actually incurred by the Trustee which are expressly approved in writing by the trustee of the Participating Trust, including fees for legal and other services rendered with respect to the establishment and administration of this Group Trust, will be allocated and paid from the Group Trust. Notwithstanding the foregoing, the Group Trust shall not be liable or responsible for the payment of fees incurred by the Trustee on account of any misfeasance, malfeasance, or nonfeasance of the Trustee on account of any act or omission in violation of this Declaration of Trust or of any applicable law.

## **ARTICLE VIII AMENDMENT AND TERMINATION**

### **Section 8.1 Termination of Participating Trusts**

The bankruptcy of a Plan shall not cause the termination of the Group Trust. Termination of a Plan's participation in the Group Trust or a Participating Trust's interest in the Group Trust shall have no effect on the continuance of the Group Trust with respect to any other Participating Trust. Except as expressly provided in this Article VIII, the Participating Trust shall not be entitled to terminate the Group Trust hereunder.

### **Section 8.2 Amendment**

The Trustee shall have the right at any time to amend this Declaration of Trust. Notwithstanding anything to the contrary herein, in no event shall this Declaration of Trust be amended or modified in any manner that would allow the funds of the Group Trust to be distributed, disbursed, or otherwise administered for any purpose other than those purposes identified in Section 2.2 above. The trustees of the Participating Trusts will deliver to the Trustee a copy of any instrument of amendment to or termination of a Plan document and shall notify the Trustee as to any change in its duties because of such amendment. For these purposes, codification of any amendment to or termination of a Plan in the North Carolina General Statutes or in related administrative rules or policies will be deemed notice to the Trustee.

### **Section 8.3 Termination**

The Trustee shall have the right to terminate the Group Trust at any time. If the Group Trust is terminated, the assets of the Group Trust must be returned to the trustees of the Participating Trusts. No Group Trust assets may be used for any other purpose. Notwithstanding the foregoing, the Trustee shall not be required to pay out any assets of the Group Trust Fund upon the termination of the Group Trust until it shall have received such directions pursuant to Section 2.3.

## **ARTICLE IX GENERAL PROVISIONS**

### **Section 9.1 No Distinction Between Principal and Income**

In the management and administration of the Group Trust, no distinction will be made between principal and income.

### **Section 9.2 Assignability**

Except as specifically permitted by this Declaration of Trust, a Plan document, or applicable law, no beneficial interest in the Group Trust Fund is assignable or subject to transfer, hypothecation, encumbrance, anticipation, alienation, legal process, pledge, mortgage, levy, execution, receivership, attachment, or garnishment by any Eligible Individual, nor shall any interest pass to any trustee in bankruptcy or otherwise be reached or applied by any legal process for the payment of any obligation of any such person.

### **Section 9.3 Taxes**

- (a) The Group Trust is intended to be a trust under Code section 115 and therefore it is intended that assets held hereunder shall not be included in gross income.
- (b) Except as provided in subparagraph (c) below, the Trustee and its agents and custodians shall have no responsibility or liability for any obligations now or hereafter imposed upon a Plan, the property held under this Declaration of Trust, or the Trustee or its agents or custodians hereunder by the tax laws of the United States or any political subdivision thereof, or any foreign jurisdiction.
- (c) It will be the responsibility of a Participating Trust to notify the Trustee of any obligations imposed on such Participating Trust, the property held under this Declaration of Trust or the Trustee or its agents or custodians by the tax law of any jurisdiction, including responsibility for withholding and other taxes, assessments or other governmental charges, certification, and governmental reporting. The Trustee shall use reasonable efforts to assist the Participating Trust with respect to any claim for exemption or refund under the tax law of any jurisdiction for which the Participating Trust has provided information.

### **Section 9.4 Employee Rights**

Neither the establishment of this Group Trust, nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, will be construed as giving to any person, whether a member, retired member, beneficiary, or any other third party, any legal or equitable right against the Trustee, any Plan or any officer, employee or member of any thereof, except as herein expressly provided; and in no event shall the terms or conditions of employment of any person, or the control of any Plan over the same, be modified or in any manner affected hereby.



## **Section 9.5 Successors and Assigns**

This Declaration of Trust will be binding upon, and the powers granted to the Trustee, hereunder will be exercisable by the Trustee's successors and permitted assigns.

## **Section 9.6 Governing Law**

- (a) This Declaration of Trust will be construed, enforced, and administered, and the validity thereof determined in accordance with the Code and the laws of the State.
- (b) The headings and subheadings in this Declaration of Trust are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Declaration of Trust.
- (c) In resolving any conflict among provisions of this Declaration of Trust and in resolving any other uncertainty as to the meaning or intention of any provision of this Declaration of Trust, the interpretation that (i) causes the Group Trust to be exempt from tax as an instrumentality of State political subdivisions, (ii) causes the Group Trust to comply with all applicable requirements of the Code, and (iii) causes the Group Trust to comply with Revenue Ruling 81-100, shall prevail over any different interpretation.

## **Section 9.7 Severability of Provisions**

If any provision of this Declaration of Trust is held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of this Declaration of Trust, but will be fully severable, and this Declaration of Trust will be construed and enforced as if the illegal or invalid provision had never been included herein.

## **Section 9.8 Gender and Number**

Wherever any words are used herein in the masculine, feminine or neuter, such words will be construed as though they were also used in another gender in all cases where they would so apply. Additionally, whenever any words are used herein in the singular or the plural form, such words will be construed as though they were also used in another form in all cases where they would so apply.

## **Section 9.9 Effective Date**

The effective date of this Declaration of Trust is August 11, 2015.

**IN WITNESS WHEREOF**, the undersigned representatives adopt the foregoing Declaration of Trust:

**THE SUPPLEMENTAL RETIREMENT BOARD OF TRUSTEES**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**THE NORTH CAROLINA SUPPLEMENTAL RETIREMENT INCOME PLAN**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**THE NORTH CAROLINA PUBLIC EMPLOYEE DEFERRED COMPENASATION PLAN**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_